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IN THE

Supreme Court of The United States

OCTOBER TERM, A. D. 1928.

NO. 306

CARSON PETROLEUM COMPANY,
Plaintiff in Error,
v.
LEON C. VIAL, Sheriff, et al.,
Defendants in Error.

Appeal from the Supreme Court of Louisiana

STATEMENT OF BASIS OF JURISDICTION OF SUPREME COURT TO REVIEW ON APPEAL THE JUDGMENT BELOW.

WILLIAM E. LEAHY,
Solicitor for Plaintiff in Error.

JOHN K. MURPHY,
HARRY A. NEWBY,
HAROLD A. MOISE,
GEORGE M. BURDITT,
Of Counsel.

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(a) There was drawn in question in this suit by the plaintiff in error the validity of the statutes of the State of Louisiana under which taxing authorities of the Parish of St. Charles levied an assessment upon merchandise oil actually in transit from the Mid-Continent Fields in Arkansas, Oklahoma and Texas to the European destination on the ground of being repugnant to the following provisions of the Constitution of the United States of America:

Article I, Section 8, Clause 3:

"The Congress shall have power * * * to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Article I, Section 9, Clause 5:

"No Tax or Duty shall be laid on Articles exported from any State."

Article I, Section 10, Clause 2:

"No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the Net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress."

The decision of the Supreme Court of the State of Louisiana, being the highest court of that state in which a decision in the suit could be had, reversing the trial Court, was in favor of the validity of the assessment. The case is within the jurisdiction of this Court by the express language of Section 237 of the Judicial Code.

(b) The Supreme Court of the State of Louisiana on May 7, 1928, entered a decree by which a decree of the Twenty-fourth Judicial District Court, Parish of St. Charles, State of Louisiana, was annulled, the writ of injunction theretofore issued dissolved, the demand of the plaintiff in error was rejected and the suit was dismissed at its costs (Rec. folio 26).

On May 21, 1928, a petition for a rehearing was filed in the said Supreme Court of the State of Louisiana,

and on June 4, 1928, the said petition for rehearing was denied without reasons (Rec. folio 42).

On June 28, 1928, a petition for the allowance of an appeal to this Honorable Court was duly presented to the Honorable Charles A. O'Neill, Chief Justice of the Supreme Court of the State of Louisiana, and on that day an order was made allowing said appeal (Rec. folio 54).

On July 25, 1928, a complete record from the Supreme Court of the State of Louisiana was duly filed with the Clerk of this Honorable Court, upon which day this cause was docketed herein (Rec. folio 54).

(c) The Carson Petroleum Company (a Delaware corporation), the plaintiff in error, filed its petition in the court of original jurisdiction, alleging, among other things, that it is engaged in selling, exporting, and otherwise distributing oils; that the Petroleum Import & Export Corporation, Inc., (a subsidiary corporation), had established and constructed necessary tanks and other equipment and facilities for the loading and discharging of cargoes of oils for exports to foreign countries on the property owned by it on the river front at St. Rose, Parish of St. Charles, State of Louisiana; that all oil shipped to St. Rose had been previously sold by the petitioner to foreign purchasers before the arrival at St. Rose, and was shipped by rail from the various states in the Union in tank cars to St. Rose and there pumped, through the facilities furnished by the said Petroleum Import & Export Corporation, Inc., into tank steamers, on their arrival, for water shipment to foreign countries.

That the Louisiana Tax Commission and the Assessor for the Parish of St. Charles have placed an

assessment on the oil in transit, or said to be on hand in the company's tanks, in the following language:

"Merchandise at St. Rose, oil—$200,000.00."

That the petitioner refused to pay the tax based on said assessment for the reason that the oils so taxed were in transit from other states in the Union to foreign countries and the tax was, and is, therefore, a tax and burden on interstate and foreign commerce and repugnant to the provisions of the Constitution of the United States and the Laws of the State of Louisiana (Rec. folio 2).

The decision of the Supreme Court of Louisiana, from which this appeal is prosecuted, contains the following:

> "The only complaint was that the assessment of the oil for taxes was deemed an interference with interstate and foreign commerce and was therefore violative of the third clause of the eighth section and the fifth clause of the ninth section, and second clause of the tenth section of Article I of the Constitution of the United States.
>
> "The plaintiff, appellee, contends that the interstate and foreign shipment of the oil, from the refineries in the Mid-Continent Field, into and across the State of Louisiana and across the sea to the foreign ports, was a continuous interstate and foreign shipment, notwithstanding its stoppage and storage at St. Rose, where it had to await either the arrival of a ship or the accumulation of a sufficient quantity of oil to load a ship.
>
> "The interstate and foreign commerce clause of the Federal Constitution does not exempt movable property from state or local taxation, if it is not discriminative, unless the property is in actual transit in interstate or foreign commerce.

"According to the rulings in * * * the judgment appealed from must be reversed and the demand of the plaintiff rejected and its suit dismissed (Rec. folio 36).

(d) The jurisdiction of this Court is sustained by, and has been exercised in *Champlain Realty Company v. Brattleboro, 260 U. S. 366; Hughes Bros. Timber Company v. Minnesota, 272 U. S. 469; Coe v. Errol, 116 U. S. 517; General Oil Company v. Crain, 209 U. S. 211.*

We, therefore, respectfully submit that this Honorable Court has jurisdiction of the subject matter and of the parties hereto, and that the above entitled cause should be placed upon the docket of this Court for hearing in due course.

Respectfully submitted,

WILLIAM E. LEAHY,
Solicitor for Plaintiff in Error.

JOHN K. MURPHY,
HARRY A. NEWBY,
HAROLD A. MOISE,
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